CHARITIES—LIABILITY OF A CHARITABLE INSTITUTION FOR TORTS.—In an action for injuries to a patient in a hospital caused by the carelessness of a nurse, the question was whether a charitable institution is liable for the negligent acts of its servants when it has failed to use due care in the selection thereof. *Held,* such an institution is liable when it fails to exercise due care in the selection of its servants. *Taylor v. The Flower Deaconess Home and Hospital* (Ohio, 1922), 135 N. E. 287.

Upon the question of the liability of a charitable institution for torts, the courts are in conflict, there being at least three lines of authority. Some courts hold that funds donated for a charitable purpose cannot be diverted to the payment of judgments for torts. *Parks v. Northwestern University,* 218 Ill. 381. *Downes v. Harper Hospital,* 101 Mich. 555; *Abston v. Waldon Academy,* 118 Tenn. 24. This doctrine is based upon public policy, the theory being that if trust funds may be so diverted the trust may be destroyed, thus discouraging the creation of charities. However, the courts which hold to this broad doctrine have not been entirely satisfied with it, and in difficult cases have been adroit in making distinctions and in limiting its scope. With *Abston v. Waldon Academy,* 118 Tenn. 24, compare *Gamble v. Vanderbilt University,* 138 Tenn. 616, and *Love v. Nashville Agricultural and Normal Institute* (Tenn., 1922), 243 S. W. 304 (a charitable institution held liable for maintaining a nuisance). Some courts hold that a person by accepting the benefits of a charity waives all claims to damages. *Thomas v. German General Benevolent Society,* 168 Cal. 183; *Powers v. Massachusetts Homeopathic Hospital,* 109 Fed. 294. This rule is usually based upon implied contract, but seems to be justified more appropriately upon the grounds of public policy. Finally, many courts hold that a public charity is not liable for the negligence of a servant in whose selection it has used due care. *McDonald v. Massachusetts General Hospital,* 120 Mass. 432; *Morrison v. Henke,* 165 Wis. 166; *Hearns v. Waterbury Hospital,* 66 Conn. 98. The basis of the rule is public policy. It is for the public good that charities should be exempt from the operation of the rule of *respondeat superior.* The courts are irreconcilable and give little help in the correct determination of the question. However, the trust fund doctrine seems the least justifiable. No person is bound to undertake a charitable mission, yet, having done so, is it not just that the undertaking be discharged with due care and diligence; and for failure to do so should not a charitable institution be just as liable for its neglect as a private individual?

CONTRACTS—COVENANT NOT TO COMPETE.—Defendant in the sale of her business covenanted not to engage in competitive business "within an area of at least ten city blocks." A like store, alleged to be owned by defendant, was opened three and a half blocks away. *Held,* bill to restrain breach of the covenant should be dismissed for lack of sufficient proof that defendant had any interest in the offending business. "But," said the court, "even if it were satisfactorily shown that defendant was owner of the new store, relief would have to be denied for the want of certainty and definiteness of the covenant." *Messinger v. Franzblau et al.* (N. J.), 118 Atl. 260.

Considered alone, the covenant is unquestionably uncertain and affords no basis upon which the relief prayed for could be granted. To merit the interposition of equity, the agreement must be certain in all its parts. *Ward v. Newbold,* 115 Md. 689. However, when viewed in the light of its circumstances and purpose, the meaning was clear. It was designed to prevent the defendant from exerting her influence and popularity in favor of a rival business sufficiently close to vitiate the good will purchased. To construe it to mean "within a radius of ten city blocks" would be to accomplish the objects for which the covenant was made. And such construction, while giving effect to the obvious intention of the parties, would not be going to the extent taken in some cases to effectuate the agreement. In *Boggs v. Friend* (W. Va.), 87 S. E. 873, where the agreement was "not to engage in business in the vicinity or neighborhood," it was held that the "restraint should go to the extent necessary, within the reasonable intendment of the parties, to fully protect the plaintiff. Similarly, in *Hubbard v. Miller, 27* Mich. 15, an agreement not to engage in the business of well-driving (without limitation as to place) was construed "to impose a restraint upon the carrying on of such business at Grand Haven and within such limits about the city as that business would naturally and reasonably embrace." The attitude of the court in the instant case is in marked contrast to the attitude regarding boundaries in conveyances. Wherever possible, the courts will uphold a deed and find in the language used a sufficient description of the property. See note, 21 MICH. L. REV. 86. Perhaps, while not so stated, the result here is due to hostility to restrictive agreements. However, "whether the restriction is against public policy ought to be determined on the facts of the case; and if there is nothing to show that the restriction would injure the public there would seem to be no satisfactory reason for refusing relief." CLARK ON EQUITY, p. 134.

CONTRACTS—ILLEGALITY—CONSIDERATION—RESTITUTION.—In February, 1917, P entered into a written contract to sell coal to D at $2.75 per ton, to be delivered in monthly installments. Under the Lever Act (Sec. 25, U. S. Comp. St., 1918; Sec. 3115⅛ q., U. S. Comp. St. Ann. Supp., 1919) President Wilson in August of 1917, established $2.00 as the maximum ton rate for coal. In October of that year an executive order raised the maximum price 45 cents a ton. By the terms of the act contracts entered into before the establishment of the maximum prices were not thereby invalidated. Deliveries were made under the original contract by P and payments made. After the addition of 45 cents to the price in October by the president, P and D agreed that this was to be added to their contract price, and deliveries and payments were made under the new understanding until March, 1918. After the March and April deliveries, D refused payment, claiming that the demand for the 45 cents additional was illegal. In this suit by P, D asked a set-off for the sums paid in excess of the original contract price. *Held,* that the agreement of October adding 45 cents to the contract price was an illegal contract; that the parties being *in pari delicto,* D could not set-off sums paid in excess of the original agreement; that P was entitled